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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,399

09/30/2003

Christopher Midgley

NTK-006.01

6490

25181

7590

04/21/2006

FOLEY HOAG, LLP

PATENT GROUP, WORLD TRADE CENTER WEST

155 SEAPORT BLVD

BOSTON, MA 02110

EXAMINER

LE, UYEN T

ART UNIT

PAPER NUMBER

2163

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/675,399	Applicant(s) MIDGLEY ET AL.	
	Examiner Uyen T. Le	Art Unit 2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6,10,11,13-23,38,40,41,43-48,50,52,53 and 55-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-6,10,11,13-23,38,40,41,43-48,50,52,53 and 55-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment to the specification and abstract are acknowledged.

Consequently, objection to the specification and abstract are withdrawn.

2. The examiner acknowledges that a data sheet had been submitted in this application. Therefore, the oath or declaration is considered valid.

3. Applicant has not corrected the grammatical error at claim 18. Therefore, objection to claim 18 is maintained.

4. Applicant canceled claims 1, 7-9, 12, 24-37, 39, 42, 49, 51, 54. Therefore, rejection to claims 29-32 under 35 U.S.C. 112, second paragraph is withdrawn.

5. Claims 2-6, 10, 11, 13-23, 38, 40, 41, 43-48, 50, 52, 53, 55-69 are pending.

6. Applicant's arguments have been fully considered but they are confusing and not understood. Applicant seems to read the specification of Midgley et al US 6,460,055 as support for the newly added features of "monitoring writes to files in the source storage system since the previous storage time". Note that the now claimed "monitoring" is not discussed in the specification of the instant application. Applicant also argues that "unlike that prior art arrangement, though, those embodiments are not described as

sending the backup location any content (as opposed to addresses) recorded by that monitoring". Applicant then cited paragraph 0046, 0048 as support. The examiner assumes the citation is with respect to the instant application. However, the language of those paragraphs do not correspond to the language cited by applicant. Due to this inaccurate quoting, the arguments are not understood.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 2-6, 10, 11, 13-23, 38, 40, 41, 43-48, 50, 52, 53, 55-69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added claims 61, 64, 67 recite limitations not discussed in the specification and not present in the claims originally filed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2-6, 10, 11, 13-23, 38, 40, 41, 43-48, 50, 52, 53, 55-69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because:

For claims 61, 64, 67, it is not understood how a sequence of storage times in the preamble affects the way the method operates, what changes at limitation A), what is considered "that storage time" at limitation i), what is considered "those contents" and "those locations" at limitation i) and ii).

Art rejection is not being applied because the limitations cannot be ascertained

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ohran (US 2003/0101321) teach transferring only the data blocks stored last to the snapshot copy.

Webb (US 6,675,177) teaches backing up digital data.

Mohan et al "ARIES/CSA: A Method for Database Recovery in Client-Server Architecture", ACM, 1994, pages 55-66.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen T. Le whose telephone number is 571-272-4021. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5 April 2006



UYEN LE
PRIMARY EXAMINER